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* NOT ADMITTED IN DC
** OF COUNSEL

September 23, 2009

BY HAND DELIVERY

The Honorable Anne K. Quinlan
Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

ENTERED
Office of Proceedings

SEP 23 2009

Part of
Public Record

MCF-21037

Re: Francis W. Sherman – Application for Acquisition of Control

Dear Secretary Quinlan:

Enclosed please find an original and 10 copies of the Verified Application for Approval of the Acquisition of Control by Francis W. Sherman of Evergreen Trails, Inc. and Horizon Coach Lines Ltd. and Continuance in Control of Cabana Coaches, LLC, together with a check in the amount of \$2,000.00. Please date stamp and return one copy to our messenger for our records.

If you have any questions concerning this, please do not hesitate to contact me.

Very truly yours,

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Edward D. Greenberg

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An International Association of Independent Law Firms in Major World Centers

BEFORE THE
SURFACE TRANSPORTATION BOARD

FRANCIS W. SHERMAN

ACQUISITION OF CONTROL

EVERGREEN TRAILS, INC.
AND
HORIZON COACH LINES LTD.



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STB DOCKET NO. MC-F 21037

VERIFIED APPLICATION UNDER 49 U.S.C. §14303(a)
FOR APPROVAL OF THE ACQUISITION OF CONTROL
BY FRANCIS W. SHERMAN
OF EVERGREEN TRAILS, INC. AND HORIZON COACH LINES LTD.
AND CONTINUANCE IN CONTROL OF
CABANA COACHES, LLC

COME NOW, the parties named herein and respectfully submit this Application under 49 U.S.C. §14303(a), made pursuant to Surface Transportation Board ("STB") Regulations at 49 CFR §1182 for approval of a corporate acquisition, described *infra* (the "Transaction"), the result of which will be the control by Francis W. Sherman of three (3) motor passenger carriers, and state the following:

A. Francis W. Sherman ("FWS") currently controls Cabana Coaches, LLC ("Cabana"), a Florida limited liability company and motor passenger carrier ("Carrier") registered with the Federal Motor Carrier Safety Administration ("FMCSA") in its Docket No. MC-646780.

B. As a result of the Transaction, FWS will control (for purposes of STB regulation) the following additional Carriers (the "Acquired Carriers"):

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- (i) Evergreen Trails, Inc., d/b/a Gray Line of Seattle ("Evergreen"), a Washington corporation, registered with the FMCSA in its Docket No. MC-107638; and
- (ii) Horizon Coach Lines, Ltd. ("Horizon"), a corporation formed under the laws of the Province of British Columbia, Canada, registered with the FMCSA in its Docket No. MC-144339.

C. In anticipation of the Transaction, and in accordance with the provisions of 49 CFR § 1013.1, FWS has deposited all of his interests in Cabana in a voting trust by and between FWS and Stuart M. Schabes ("Trustee") dated May 22, 2009, as more fully described below.

Parties to This "Transaction"

Identity of the Parties

The parties to the proposed corporate transaction are as follows.

- A. FWS, a non-carrier, is an individual resident of the State of Florida having an address as set forth opposite his signature herein below.
- B. Cabana, a Carrier, is a Florida limited liability company, holding FMCSA operational authority in MC-646780, and having its principal place of business at the address set forth opposite the signature of an authorized representative of Cabana herein below.
- C. Evergreen, a Washington corporation, is a Carrier, holding FMCSA operating authority in MC-107638, and having its principal place of business at the address set forth opposite the signature of an authorized representative of Evergreen herein below.
- D. Horizon is a corporation formed under the laws of the Province of British Columbia, Canada, holding FMCSA operating authority in MC-144339, and having its principal

place of business at the address set forth opposite the signature of an authorized representative of Horizon herein below.

E. Evergreen and Horizon are the Carriers (collectively, the “Acquired Carriers”), the control of which is to be acquired in the Transaction at issue. Immediately prior to the Transaction, Evergreen and Horizon comprised a part of the Holland America Line Inc. (“HAL”) “common control” structure. The common control relationships involving the HAL corporate family have been previously approved by the STB (or its predecessor, the Interstate Commerce Commission (“ICC”)). The most recent STB approval of this common control is evidenced by the decision in *Holland America Line, Inc., - Acquisition of Royal Highway Tours, Inc.*, STB Docket No. MC-F-21033 (served April 3, 2009); *see, also, Holland America Line Inc. – Control – Westours Motorcoaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada Ltd., Horizon Coach Lines Ltd., and Discover Alaska Tours, Inc.*, STB Docket No. MC-F-21026 (served March 21, 2008).

Pertinent Operating Authorities

Evergreen holds Certificates, issued by the ICC, now administered by FMSCA, in Docket MC-107638 and subnumbers thereunder, authorizing, in part, transportation of passengers, in charter and special operations, between points in the United States.

Horizon holds Certificates, issued by the FMSCA, in Docket MC-144339 and subnumbers thereunder, authorizing, in part, transportation of passengers in foreign commerce, as is common for Canadian domiciled Carriers.

Cabana holds Certificates, issued by the FMSCA in Docket MC-646780 and subnumbers thereunder, which generally permits the transportation of passengers in intrastate charter and special operations in connection with interstate and international air and sea travel.

Description of the Proposed Transaction

The event triggering STB jurisdiction is the acquisition of control by FWS of the Acquired Carriers and the continuance of control of Cabana by FWS.

STB's jurisdiction is invoked pursuant to 49 U.S.C. §14303(a)(4), since the transaction involves "the acquisition of control of at least 2 carriers (i.e., Evergreen and Horizon) by a person that is not a carrier (i.e., FWS), and 49 U.S.C. §14303(a)(5), since the transaction involves "the acquisition of control of a carrier (i.e., Evergreen and Horizon) by a person that is not a carrier (i.e., FWS), but that controls any number of carriers [i.e., Cabana]."

Upon the (i) receipt of STB approval and (ii) consummation of the Transaction, FWS will indirectly own all of the outstanding shares of stock in Evergreen and Horizon through his ownership of all of the outstanding shares of stock in (i) TMS West Coast, Inc., a Washington corporation ("TMS") and (ii) TMS Canada Holdings Ltd., a British Columbia corporation ("TMS-CA"). TMS will acquire all of the outstanding shares of Evergreen and TMS-CA will acquire all of the outstanding shares of Horizon.

Federally Regulated Carrier Affiliates

The Carriers involved in this Transaction are described above.

Jurisdictional Statement – Revenues

The Surface Transportation Board has jurisdiction over this matter under 49 U.S.C. §14303(g), because the annual aggregate gross operating revenues of (i) Cabana and (ii) the Acquired Carriers exceed \$2 million.

Environmental Impact

Approval of this application will not constitute a Federal action having a significant effect on the quality of the human environment and the conservation of energy resources.

Public Interest Considerations

a. Adequacy of Transportation Services

The proposed transaction will not adversely impact the adequacy of transportation services available to the public; nor will the proposed transaction be visible to the general public. Each of the Acquired Carriers has an extensive record of providing motor coach passenger services in the Pacific Northwest bus community; in some cases this record includes nearly twenty years of service. The services provided by the Acquired Carriers will continue to be provided under the same tradenames used to provide such services prior to the proposed transaction, so that the proposed arrangements will be invisible to customers. While these Acquired Carriers will continue to operate, on a going forward basis, each will be operating so as to generate additional benefits to customers and the public that are able to be provided by operators whose exclusive focus is enhancing the quality of the ground transportation experience of their customers.

The consummation of the Transaction is consistent with the practice throughout the bus industry of strong, well managed transportation organizations adapting their corporate structure to identify and capitalize on opportunities for synergy and economies of scale. In that regard, FWS will be bringing his extensive experience to the Acquired Carriers, and the Transaction is expected to result in additional operating efficiency and cost savings for the operator, while providing enhanced service to customers.

b. Fixed Charges

There are no fixed charges associated with the proposed acquisition of control.

c. Employee Interests

No Carrier operations employees will be adversely affected by the change, except for a small number of administrative employees who may lose their positions in order for the Acquired Carriers to operate with increased efficiency.

d. Competition and the Public Interest

The law requires the STB to assess competition in the market and the impact on the public interest as affected by approving an arrangement in which multiple passenger Carriers are under control of a single economic entity. In making its analysis, the Board (as did its predecessor, Interstate Commerce Commission) has without exception found that proposed “common control” arrangements (however accomplished) are inherently not anti-competitive. In large measure, that conclusion rests on the finding that as a result of ease of entry into the market, the bus industry is characterized by healthy intramodal competition as well as healthy competition between bus service, on the one hand, and on the other, other modes of transportation, all of which constitute the “relevant market.” *GLI Acquisition Co – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 598- 602 (1988).

The Greyhound – Trailways merger dealt with the only two nationwide, scheduled service Carriers; scheduled service is a segment of the industry in which there exist potential barriers to entry (i.e., terminal access) and a lessening of competition might be thought to at least be a potential issue for concern. But even there, the competitive nature of that bus business allayed any anti-competition concerns that might otherwise have arisen.

This application, however, involves Carriers engaged in the charter and tour segment of the industry, which is vastly more competitive than the scheduled service sector. Indeed, in recent years, the Board has been called upon to consider numerous “control” applications as consolidation within the charter bus industry has led to a handful of larger entities acquiring many smaller charter and tour Carriers and operating them under common control. In *each and every instance*, the Board approved these applications without any concern for competition considerations and found them to be in the public interest.

None of the Acquired Carriers are in direct competition with one another, so the common control by FWS will have no impact on competition within the market. Moreover, the relationship between the Acquired Carriers is pre-existing and has been previously approved by the STB. As stated above, to the parties’ best knowledge, in treating applications under §14303, the STB has consistently and without exception found the passenger transportation business inherently competitive due to the low barriers to entry by new competitors, especially for a new charter Carrier. The Interstate Commerce Commission’s findings on this issue remain true today for this segment of the transportation business. *GLI Acquisition Co – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 598-602 (1988).

In recent years, on the rare occasions in which the STB has been called upon to assess the “public interest” and “competition” issues inherent in the acquisition of ownership of numerous bus Carriers by non-carrier entities, it has consistently and without exception approved each and every application of this sort, finding that acquisitions that contemplate the single control of multiple passenger Carriers can result in better overall service for the public without any lessening of the benefits of healthy competition.

Recently approved “control” applications include *Stagecoach Group PLC and Coach USA, Inc., et al., – Acquisition of Control – New Today Bus Corp., et al.*, STB Docket No. MC-F-21030 (served January 30, 2009); *Stagecoach Group PLC and Coach USA, Inc, et al., – Acquisition of Control – Eastern Travel and Tour, Inc.*, STB Docket No. MC-F-21029 (served September 18, 2008); *Delivery Acquisition, Inc – Purchase – Transportation Management Systems, LLC and East West Resort Transportation, LLC*, STB Docket No. MC-F-21028, (served July 18, 2008); *Stagecoach Group PLC and Coach USA, Inc., et al., – Control – Megabus Northeast, LLC*, STB Docket No. MC-F-21027 (served April 11, 2008); *Holland America Line Inc. -- Control – Westours Motor Coaches, Inc., Evergreen Trails, Inc., Westmark Hotels of Canada, Ltd., Horizon Coach Lines, Ltd., and Discover Alaska Tours, Inc.*, STB Docket No. MC-F-21026 (served March 21, 2008).

In each decision in recent years – if not uniformly since the Board assumed jurisdiction over such transactions in 1996 – the Board has found that such common control arrangements are consistent with the public interest and it has approved them. The same finding is warranted here.

U.S. DOT Safety Fitness Rating

The U.S. Department of Transportation Safety Rating for each of Evergreen and Horizon is “satisfactory”. Cabana has no U.S. Department of Transportation Safety Rating.

Insurance Certification

Each of the Acquired Carriers involved in this application has on file with FMCSA evidence of appropriate insurance coverage for bodily injury and property damage at limits of not less than \$10 million.

Mexico Certification

The parties certify that none of the companies named in this application is domiciled in Mexico, nor are they owned or controlled by persons of that country.

Voting Trust Considerations

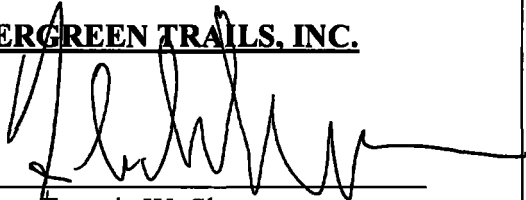
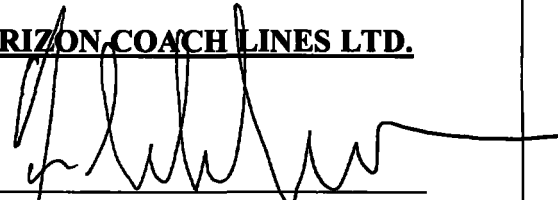
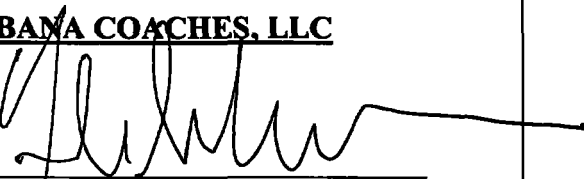
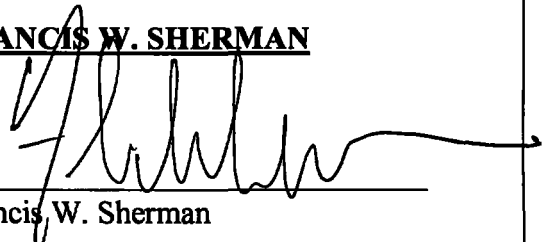
To facilitate consideration of this application and the Transaction referenced herein, FWS has deposited all of his interests in Cabana in the Voting Trust. The Trustee will act by written consent or will vote all of the Cabana interests in favor of any proposal necessary to effectuate the Transaction. On other matters (including the election or removal of directors), the Trustee generally will vote such interests in Cabana in the Trustee's sole discretion unless the holder(s) of trust certificates, with the prior written approval of the STB, directs the Trustee as to any such vote.

Verification

Each person signing this application verifies under penalty of perjury, under the laws of the United States of America, that all information supplied by such person on behalf of the company which he represents in connection with this application is true. Further, each person signing this application is qualified and authorized to file this application.

Each person signing further certifies under penalty of perjury under the laws of the United States, that he knows that willful misstatements or omissions of material facts constitute

Federal criminal violations punishable under 18 U.S.C. §1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. §1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

<u>ADDRESSES</u>	
C/O Ober , Kaler, Grimes & Shriver 120 E. Baltimore Street Baltimore, Maryland 21202	<u>EVERGREEN TRAILS, INC.</u>  By: _____ Name: Francis W. Sherman Title: President
C/O Ober , Kaler, Grimes & Shriver 120 E. Baltimore Street Baltimore, Maryland 21202	<u>HORIZON COACH LINES LTD.</u>  By: _____ Name: Francis W. Sherman Title: President
C/O Ober , Kaler, Grimes & Shriver 120 E. Baltimore Street Baltimore, Maryland 21202	<u>CABANA COACHES, LLC</u>  By: _____ Name: Francis W. Sherman Title: Managing Member
C/O Ober , Kaler, Grimes & Shriver 120 E. Baltimore Street Baltimore, Maryland 21202	<u>FRANCIS W. SHERMAN</u>  _____ Francis W. Sherman

Francis W. Sherman's Representative

Francis W. Sherman's representatives are

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Conclusion


As provided by 49 CFR §1182 and for the reasons set forth herein, the Surface Transportation Board is requested respectfully to approve this application and authorize the transaction and acquisition of control as described herein.

Respectfully,



Michael L. Jennings
Co-counsel for Francis W. Sherman

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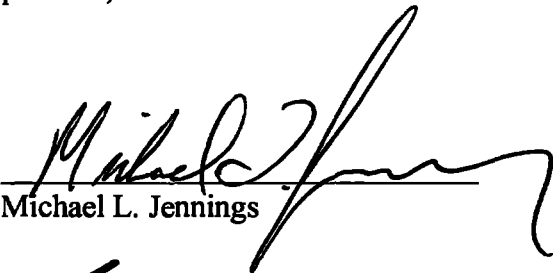



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Certificate of Service

I hereby certify that as required by 49 CFR §1182.3, I have served a copy of the foregoing Application by mailing a copy thereof, via First Class Mail, postage prepaid on the U.S. Department of Transportation, Chief Licensing and Insurance Division, 1200 New Jersey Avenue, S.E., Washington, DC 20590; and the state regulatory agency for the state in which one or more of the involved Carriers hold intrastate authority, namely, the Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250.

Dated at Washington, DC, this 3rd day of September, 2009.


Michael L. Jennings


Edward D. Greenberg